

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

USA,

Plaintiff,

V.

C BLU,

Defendant.

CASE NO. CR21-5340-BHS

ORDER DENYING DEFENDANT'S
APPLICATION TO PROCEED IN
FORMA PAUPERIS ON APPEAL

Currently Pending before this Court is Defendant's Application to Proceed *In Forma Pauperis* on Appeal. Dkt. 61. On October 1, 2021, Defendant filed a notice that he intends to appeal to the United States Court of Appeals for the Ninth Circuit the Judgment and Sentence, dated September 17, 2021, finding him guilty of disturbing wildlife and feeding wildlife in violation of 36 C.F.R. § 2.2(a)(2). Dkt. 60-1. On October 12, 2021, the Honorable Benjamin H. Settle referred to the undersigned the question of whether Defendant's appeal is taken in good faith. Dkt. 64.

A party who has been permitted to proceed *in forma pauperis* in the underlying district court action may in turn proceed IFP on appeal. Fed. R. App. P. 24(a)(3). Here, Defendant did

1 not proceed *in forma pauperis* in the underlying district court action. Accordingly, this Court
2 must consider his request under Fed. R. App. P. 24(a)(1), which provides:

3 [A] party to a district-court action who desires to appeal *in forma pauperis* must file
4 a motion in the district court. The party must attach an affidavit that:

5 (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the
6 party's inability to pay or to give security for fees and costs;
7 (B) claims an entitlement to redress; and
8 (C) states the issues that the party intends to present on appeal.

9 Although Defendant meets these requirements and demonstrates his indigence under 28 U.S.C. §
10 1915(a)(1), “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing
11 that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). The good faith standard is satisfied
12 when an individual “seeks appellate review of any issue not frivolous.” *See Coppedge v. United
13 States*, 369 U.S. 438, 445 (1962). For purposes of 28 U.S.C. § 1915, an appeal is frivolous if it
14 lacks any arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

15 In his Notice of Criminal Appeal (Dkt. 61-1) Defendant indicates:

16 The questions and concerns the Defendant aims to bring on appeal are several:
17 Constitutional Errors; Errors of Law; and Abuse of Judicial Discretion. This
18 includes, yet is not necessarily limited to, the Ineffective Assistance of Counsel;
19 Insufficient Evidence; Evidence Does Not Support the Verdict; Constitutionality of
20 the Law in Question, as Written; Procedural Error; Improper Ruling; Error in
21 Judgment; Challenge of Finding of Fact; Presents a Mixed Question of Law and
22 Fact; Wrongful Conviction; Pretrial and Trial Rulings; and Evidence improperly
23 included/excluded.

24 *Id.* at 1.

25 The Court finds that this appeal would not be taken in good faith and would lack any
26 arguable basis in law or fact. A bench trial in this matter was held before the undersigned on
27 September 1, 2021, September 14, 2021, and September 17, 2021. *See* Dkt. 58, 59, 60.
28 Defendant proceeded *pro se*. After hearing testimony from both sides, the Court concluded that
29 the totality of the evidence showed Defendant's actions on the day in question led to and

1 constituted the feeding of wildlife in violation of 36 C.F.R. § 2.2(a)(2). Accordingly, the Court
2 recommends that Defendant's petition to proceed *in forma pauperis* (Dkt. 61) is denied. If
3 Defendant wishes to pursue an appeal, he should pay the requisite filing fee.

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5 Dated this 13th day of October, 2021.

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David W. Christel
United States Magistrate Judge

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